Clipper International Corporation *and* Local 7267, United Paperworkers International Union, AFL–CIO. Cases 7–CA–36754 and 7–CA–36851

September 14, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

Upon charges filed by the Union on January 19 and February 16, 1995, the General Counsel of the National Labor Relations Board issued complaints on February 27 and March 23, 1995, against Clipper International Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. An order consolidating cases issued March 24, 1995. Although the Respondent filed answers to the complaints on May 4, 1995, the Respondent withdrew its answers on July 12, 1995.

On August 8, 1995, the General Counsel filed a Motion for Default Summary Judgment with the Board. On August 10, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaints shall be deemed admitted if an answer is not filed within 14 days from service of the complaints, unless good cause is shown. In addition, the complaints affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Respondent, on July 12, 1995, withdrew its answers to the complaints with the understanding that a Motion for Default Summary Judgment would be filed. Such a withdrawal of the Respondent's answers to the complaints has the same effect as a failure to file an answer to each complaint, i.e., the allegations in the complaints must be considered to be admitted to be true.[1]

Accordingly, based on the withdrawal of the Respondent's answers to the complaints, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Michigan corporation, has maintained an office and place of business at 8651 East Seven Mile Road, Detroit, Michigan, and has been, at all material times, engaged in the manufacture, distribution, and nonretail sale of automobile parts. During the calendar year ending December 31, 1994, the Respondent, in conducting its business operations, sold and shipped goods valued in excess of $50,000 from its Detroit place of business directly to points outside the State of Michigan and directly to General Motors Corporation, an enterprise within the State of Michigan directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 7267, United Paperworkers International Union, AFL–CIO (the Union), its International, United Paperworkers International Union, AFL–CIO (UPIU), Local 267, Allied Industrial Workers of America, AFL–CIO (Local 267), and its International, International Union, Allied Industrial Workers of America, AFL–CIO (AIW), are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part-time production and maintenance employees including machine operators, power vehicle operators, crib attendants, truck drivers (stake), tool and die makers, job setters, shipping and receiving clerks, inspectors, welders and assemblers/laborers, employed by the Respondent at its Detroit place of business; but excluding all office clerical employees, guards and supervisors as defined in the Act.

At all times material prior to January 1, 1994, Local 267 was the designated exclusive collective-bargaining representative of the unit and was recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from September 1, 1991, to August 31, 1994. About January 1, 1994, AIW and UPIU merged, with UPIU continuing as the name of the merged International labor organization. Since about January 1, 1994, the Union has succeeded Local 267 as the designated exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. At all times since

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

January 1, 1994, the Union has been and is the exclusive representative of the unit employees by virtue of Section 9(a) of the Act.

The most recent collective-bargaining agreement in effect between the Respondent and the Union, which by its terms was effective from September 1, 1991, until August 31, 1994, provided, inter alia, in article eleven, "Insurance," that the Respondent fully pay medical insurance premiums on behalf of the unit employees.

About July 28, 1994, the Respondent and the Union commenced negotiations with respect to a successor collective-bargaining agreement. During the course of these negotiations, the Respondent and the Union executed two extension agreements which extended the terms of the 1991–1994 agreement described above until November 15, 1994. About December 13, 1994, the Respondent and the Union reached tentative agreement for a new collective-bargaining agreement to be effective from September 1, 1994, to August 31, 1997. The tentative agreement further provided that all "economic" issues in the expired agreement be continued for 1 year (from September 1, 1994, through August 31, 1995).

Since about October 1, 1994, and continuing to date, the Respondent failed and refused, and continues to fail and refuse, to pay medical insurance premiums on behalf of the unit. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without the consent of the Union during the extension period of the 1991–1994 agreement and thereafter, without prior notice to the Union, and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

About December 13, 1994, the Union and the Respondent reached complete agreement on the terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement. Since about late January/early February 1995, the Union has requested that the Respondent execute a written contract containing this agreement, but the Respondent has failed and refused to do so. About February 15, 1995, the Respondent informed the Union that it would not execute the agreement because the Union had filed an unfair labor practice charge against the Respondent in Case 7–CA–36754.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, including within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing, since October 1, 1994, to pay contractually required medical insurance premiums on behalf of the unit employees, we shall order the Respondent to restore the employees' medical insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has unlawfully refused, since late January/early February 1995, to execute the collective-bargaining agreement with the Union reached about December 13, 1994, we shall order the Respondent to do so, to give retroactive effect to that agreement, and to make the unit employees whole for any losses they have suffered as a result of the Respondent's unlawful failure to execute the agreement. Backpay shall be computed in accord with *Ogle Protection Services*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Clipper International Corporation, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to pay contractually required medical insurance premiums on behalf of the following unit employees.

> All full time and regular part-time production and maintenance employees including machine operators, power vehicle operators, crib attendants, truck drivers (stake), tool and die makers, job setters, shipping and receiving clerks, inspectors, welders and assemblers/laborers, employed by the Respondent at its Detroit place of business; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Refusing to execute a written contract containing the agreement reached with Local 7267, United Paperworkers International Union, AFL–CIO about December 13, 1994, containing the terms and conditions of employment of the unit because the Union had filed an unfair labor practice charge against the Respondent.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the employees' medical insurance coverage, and make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, in the manner set forth in the remedy section of this decision.

(b) Execute and implement the collective-bargaining agreement with the Union reached about December 13, 1994, give retroactive effect to the agreement, and make the unit employees whole for any losses they have suffered as a result of the Respondent's unlawful failure to execute the agreement, with interest, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 14, 1995

William B. Gould IV, Chairman

Margaret A. Browning, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to pay medical insurance premiums on behalf of our unit employees:

> All full time and regular part-time production and maintenance employees including machine operators, power vehicle operators, crib attendants, truck drivers (stake), tool and die makers, job setters, shipping and receiving clerks, inspectors, welders and assemblers/laborers, employed by us at our Detroit place of business; but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to execute a written contract containing the agreement reached with Local 7267, United Paperworkers International Union, AFL–CIO about December 13, 1994, containing the terms and conditions of employment of the unit because the Union had filed an unfair labor practice charge against us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the employees' medical insurance coverage and make our unit employees whole by reim-

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

bursing them for any expenses ensuing from our unlawful conduct, with interest.

WE WILL execute and implement the collective-bargaining agreement with the Union reached about December 13, 1994, give retroactive effect to the agreement, and make our unit employees whole for any losses they have suffered as a result of our unlawful failure to execute the agreement, with interest.

CLIPPER INTERNATIONAL CORPORATION